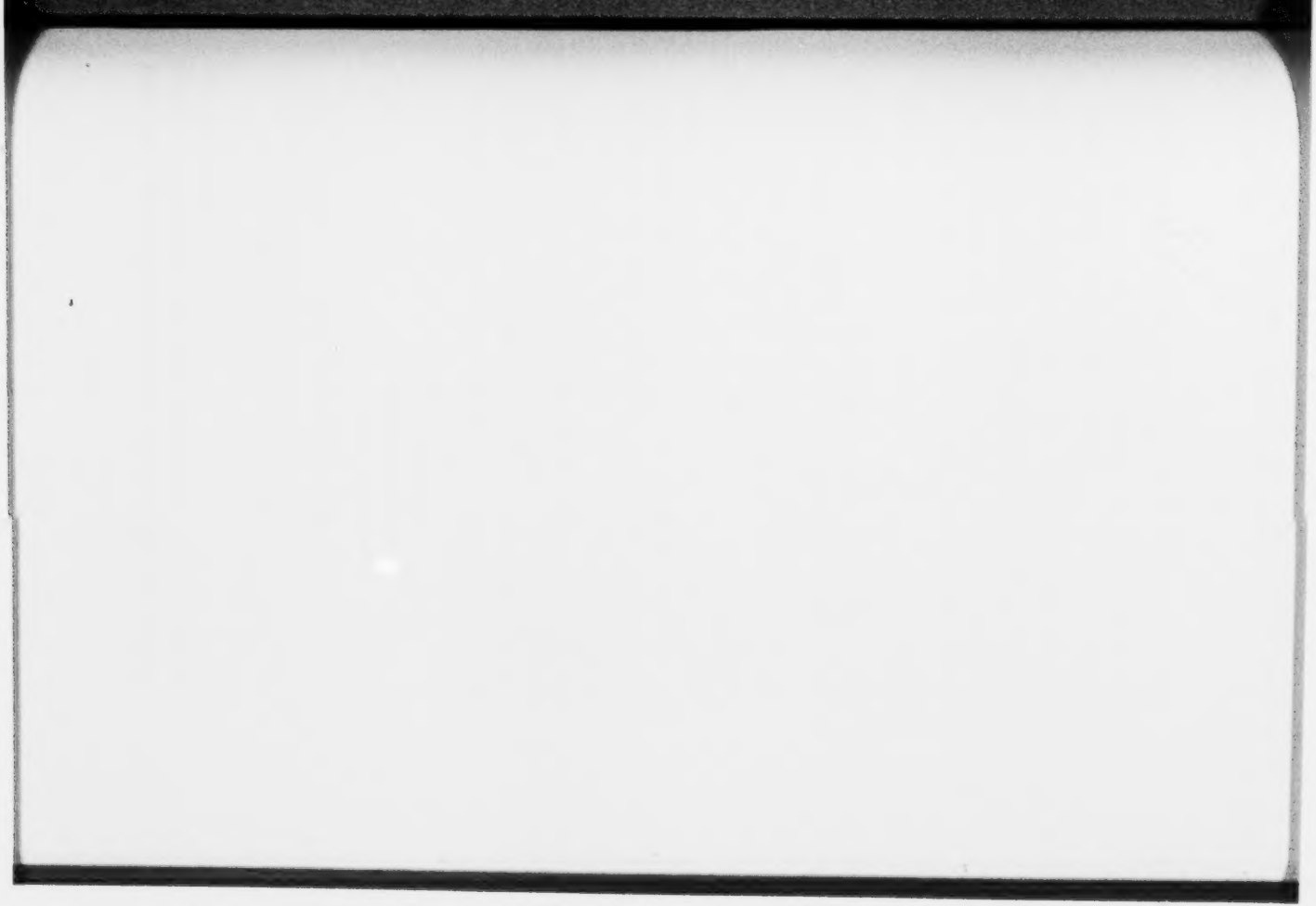

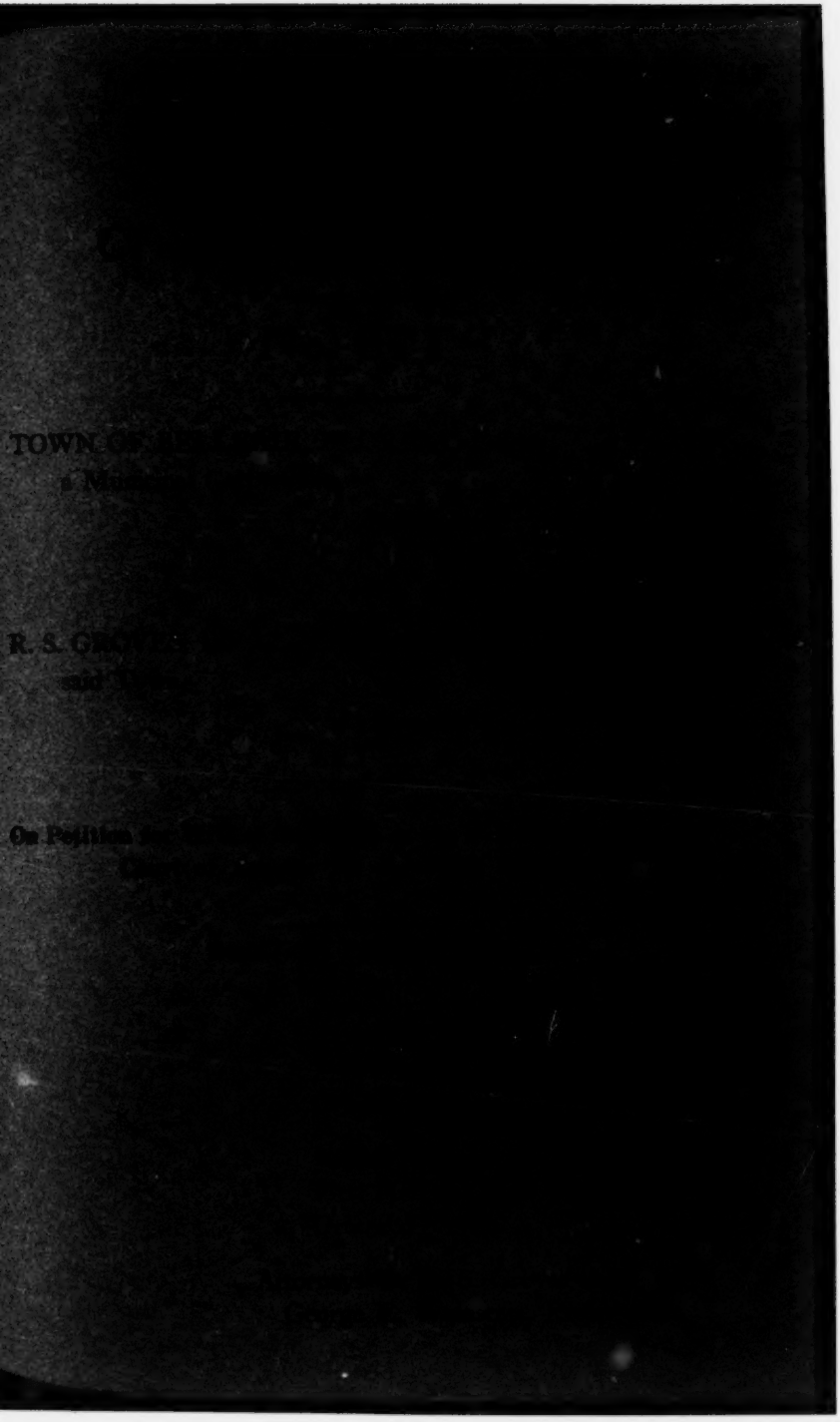

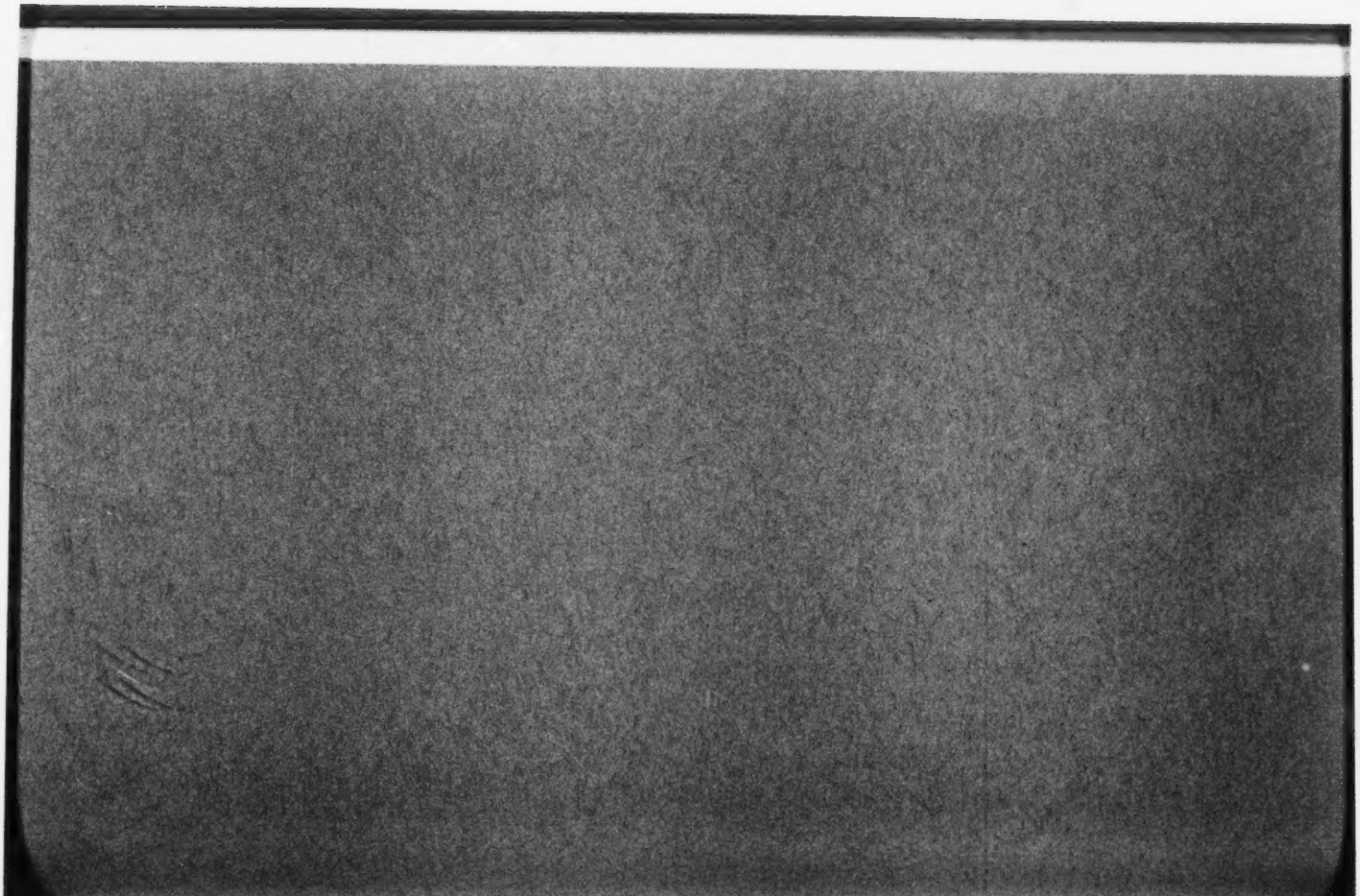

INDEX

		Page
I.	STATEMENT OF THE CASE	1
II.	ARGUMENT	6
	1. The Town Cannot Champion the Rights of Third Parties Who Have Not Appealed	16
	2. The Water and Gas Bonds	17
	3. No Important Questions of Federal Law Decided	18

ALPHABETICAL LIST OF AUTHORITIES CITED

STATUTES: Page

Municipal Bankruptcy Act (11 U.S.C. 401-403) . 1

(11 U.S.C. 403 (d)) . 13

(11 U.S.C. 403 (e)) . 5

Federal Rules of Civil Procedure, Rule 50 . . . 4

CASES:

American United Mutual Life Insurance Co. vs. City of Avon Park, 311 U. S. 138, 61 S. Ct. 157, 85 L. Ed. 112 . . . . . 6, 7, 12

Cronin vs. Adams, 192 U. S. 1081, 24 S. Ct. 219, 48 L. Ed. 365 16

In Re Kaufman County Improvement District No. 4, 34 Fed. Supp. 670 14

Kaufman County Improvement District No. 4 vs. Mitchell, 116 F. (2) 959 . . . . . 14, 15

McCabe vs. Atchison, T. & S. F. R. R. Co., 235 U. S. 151, 162, 35 S. Ct. 69, 71, 59 L. Ed. 169 . . . 16

Olds vs. Alvord, 133 Fla. 221, 183 So. 711 . . . 9

Red River Valley National Bank of Fargo vs. Craig, 181 U. S. 548, 21 S. Ct. 703, 707, 45 L. Ed. 994 17

State vs. Town of Belleair, 125 Fla. 669, 170 So. 434 8

Standard Stock Food Co. vs. Wright, 225 U. S. 540, 550, 32 S. Ct. 784, 56 L. Ed. 1197 16

Touchton vs. Fort Pierce, 109 F. (2) 370, Cert. Den. 84 L. Ed. 1417 18

Town of Belleair, 127 F. (2) 279 5

Union Trust Co. vs. Wilson, 198 U. S. 530, 255 S. Ct. 766, 49 L. Ed. 1154 11

Vallette vs. Vero Beach, 104 F. (2) 59 18

SUPREME COURT OF THE UNITED STATES

No. 671

TOWN OF BELLEAIR, FLORIDA, Debtor,
a Municipal Corporation,
Petitioner,

vs.

R. S. GROVES, ET AL., Creditors of the
said Town,
Respondents.

BRIEF IN OPPOSITION

I. STATEMENT OF THE CASE.

The Town of Belleair, Florida, filed a petition in the United States District Court for the confirmation of a Plan of Composition of certain of its indebtedness under the provisions of the Municipal Bankruptcy Act (11 U. S. C. 401-403). The Plan (R. 4-17) was in the form of a contract between the Town and the consenting creditors, and the attorneys for the Town, who were also consenting creditors. The only consenting creditors to the Plan were Palmer, Hobart, Kirkeby, and Haley & Reaves (the attorneys) who controlled approximately 68 per cent of the indebtedness; the holders of approximately 23 per cent of the indebtedness objected to the Plan.

The Plan, in substance, provided:

1. That the principal indebtedness described in it would be refunded by the issuance of bonds dated July 1, 1940, bearing four per cent interest per annum in the ratio of thirty cents on the dollar for principal, and nothing for interest, (R. 4) all interest indebtedness and seventy per cent of the principal indebtedness would be wiped out.

2. Hobart and Palmer (consentors to the Plan, and holders of bonds involved in a peremptory writ of mandamus for levy against the Town in the sum of $21,000. in principal and $11,000. in interest) were to receive twenty-one bonds bearing six per cent interest, dated July 15, 1940, and to mature serially over a period of five years. The bonds involved in the action were precisely of the same class as all other bonds, which the Town and the consentors (Hobart, Palmer and others) proposed to reduce by seventy per cent of principal, and wipe out all accrued interest thereon.

3. Hobart, Palmer (consenting creditors) and others were to be paid $18,000.00 in cash, with interest from February 1, 1940, at six per cent per annum, the balance due under a certain trust agreement under which the Town had been purchasing $90,000. in par value Water and Gas Bonds, which bonds were of the same class as all other bonds being composed in the proceedings. These ninety bonds, under the trust agreement, (R. 237) were being purchased by the Town at a price of $72,000.00 in cash (80 cents on the dollar flat in cash) (all other bonds of the same class were to be refunded by an exchange of bonds at thirty cents on the dollar flat, and nothing for interest). The Water and Gas Bonds were to be held intact and uncancelled until the amounts thereon were paid and then the bonds were to be cancelled.

4. Haley and Reaves, the attorneys for the Town, and consentors to the Plan, were to receive thirty-five bonds of the same class and denomination as all other creditors for their services performed and to be performed, (some of which were for suits against the Town with "the cooperation of the Town authorities"—see contract dated November 13, 1940 (R. 252)).

As stated above, the only consenting creditors to the Plan were Palmer, Hobart, Kirkeby and Haley & Reaves, who controlled approximately sixty-eight per cent of the alleged indebtedness. The holders of approximately twenty-three per cent of the indebtedness objected to the Plan, the remaining eight per cent of the creditors have taken no part in the case. Objections were filed to the Plan by Groves and Wainscott, Respondents herein, and the holders of judgments approximating $145,000.00, alleging in substance that the Plan of Composition, and its acceptance was not filed in good faith, but was a collusive and fraudulent scheme on the part of the Town and the consenting creditors, who were likewise the largest taxpayers in the Town, or who were interested in various corporate devices, which in turn were taxpayers in the Town, to compose the debts of the Town at far less than the ability of the Town to pay, and thus bring about a discriminatory saving to the taxpaying consenting bondholders at the expense of other bondholders; that the consenting creditors acquired the bonds held by them in a sufficient amount to comply with the requirements of the Bankruptcy Act, solely for the purpose of furthering the collusive and discriminatory scheme, and that the price paid for the securities was far below the par value thereof; that the depreciated value of the securities was brought about in a great part by injunctive suits and other litigation on the part of the consenting creditors as a part of this same collusive scheme to depress the market value of

these securities, and thus reap the benefit to the consenting creditors, as taxpayers, and not as bondholders (R. 27-34).

Objection was further raised to that part of the Plan by Palmer and Hobart, two of the consenting creditors, which were to receive short term high interest rate bonds at par for par for the $21,000. item due under the peremptory writ of mandamus, while at the same time requiring other creditors holding securities of the same class to take a seventy per cent cut in principal, to forgive all interest and to take callable bonds maturing in twenty years, bearing a lower rate of interest than those offered to Palmer and Hobart. Objection was further made to that part of the Plan which would issue refunding bonds to Haley & Reaves, consenting creditors, at par for par for their alleged claim for services by issuing them bonds of the same class as all other bondholders; that the Plan of Composition in general discriminated unfairly in favor of the consenting creditors, Palmer, Hobart, Kirkeby and Haley, as taxpayers, and discriminated unfairly against creditors who were not taxpayers; that the offer of the Plan and its acceptance were in bad faith, and were brought about by collusion and fraud. The objections of all other objecting creditors were substantially the same as those of these respondents.

The only testimony offered before the Master in support of the Plan was that of the Town and the consenting creditors. The objecting creditors offered no testimony as to the ability of the Town to pay, or as to any other matter, but at the end of the testimony submitted by the Town and the consenting creditors, the objectors (the holders of approximately twenty-three per cent of the indebtedness), following the provisions of Rule 50, F. R. C. P., filed various motions to dismiss the case (R. 225), contending that it affirmatively appeared from

the testimony of the proponents of the Plan that it did not comply with the provisions of the Municipal Bankruptcy Act, and that the proceedings therefore should be dismissed. Thereupon, the Master rendered his report (R. 42-61), finding that the Plan, in its practical incidence, did not comply with the provisions of the Municipal Bankruptcy Act (11 U. S. C. 403 (e)) for many reasons. He further found that the consenting creditors to the Plan had received preferential payments of money during the trial of the case (R. 49-57). After the filing of the Master's report, and on exceptions to it, the Court approved the findings and conclusions of the Master (R. 263) in all respects, except that it determined that the so-called "Water and Gas Bonds" should be included in any new plan in like manner as all other bonds (R. 268-269), and that the Plan discriminated unfairly in favor of the taxpaying bondholders (the consenting creditors) as against non-taxpaying bondholders (the objecting creditors).

The Court further found that the Petitioner had made known its desire to submit an amended or modified Plan, and allowed it sixty days from the date of the order in which to prepare and file the same. (R. 273.) The Town filed no modified plan within the sixty days allowed, but immediately appealed to the United States Circuit Court of Appeals, which appeal was dismissed by that Court (127 F. (2) 279) as not being from a final order. After the mandate came down from that case, the Town filed slight modifications (R. 289), but in substance it was the same as the original plan, and did not comply with the ruling of the Court of July 22, 1941, requiring that some differential be made between the taxpaying bondholders and the non-taxpaying bondholders. Motion was thereupon made to strike the modified plan and dismiss the proceedings (R. 295) upon several grounds. No new testimony was taken and the Court made findings of fact and con-

clusions of law from the Master's report (R. 308), saying "it is not necessary for the Court to rule upon the legal sufficiency of Sections 1, 2, 3, 4 or any portion of the plan, except as set forth in the above conclusions numbered 1 and 2."

Conclusion No. 1 (R. 304), in substance, was that the so-called "Water and Gas Bonds" should be treated in like manner as all other bonds. Conclusion No. 2 (R. 305), in substance, was that the modified plan discriminated unfairly in favor of property owning bondholders, and against the non-property owning bondholders. Thereupon, the Court dismissed the proceedings without prejudice to the right of the City to file a new plan not inconsistent with the order of the Court. None of the consenting creditors have filed notices of appeal from the order, and they are not before this Court.

II. ARGUMENT

The form of the Plan of Composition submitted to a bankruptcy court for confirmation is relatively unimportant, except that it must prima facie conform to the statute so that the Judge may see that it is properly filed. After the plan is filed and the Court receives testimony in support of it, an examination of the essential nature of the plan and the practical result of its completion and operation are looked to in determining whether or not, in its practical aspect, the plan is really fair and equitable and does not discriminate unfairly in favor of any creditor. *American United Mutual Life Insurance Co. vs. City of Avon Park*, 311 U. S. 138, 61 S. Ct. 157, 85 L.

Ed. 112. The Court in this case pointed out that the necessity for the exercise of the equitable powers of the Court

> "is based upon the responsibility of the Court before entering an order of confirmation to be satisfied that the plan in its practical incidence embodies a fair and equitable bargain openly arrived at and devoid of overreaching, however subtle."

Following this rule, not only the Master, but the Judge in the lower court, cut through the technical elements and applied the fundamental purpose of the bankruptcy law to the facts adduced by the proponents of the plan in support of it. They found not equality between the creditors of the plan, but inequality. The record, it is submitted, shows that the consents were not obtained as a result of a fair and equitable bargain, openly arrived at as between a debtor (the Town), acting as a debtor, and two-thirds of the creditors of the debtor (the consenting creditors), acting as creditors for the benefit of the creditors, but was a scheme and a device fused in one simple purpose by the Town and the consenting creditors, (who for all intents and purposes are one and the same), joined together, and acting in a concerted action to reduce the indebtedness of the Town as much as possible, all of which would accrue to the benefit of the consenting creditors and to the detriment of the objectors. In other words, the District Judge followed the rule laid down by this Court in the case of *American United Mutual Life Insurance Company vs. City of Avon Park*, supra, and found "special benefits to the organizers" not accorded other creditors.

A brief history of the case, as shown by the uncontradicted testimony, will clearly convince this Court that the practical work-out of the Plan is most inequitable to the creditors who are not taxpayers in the Town.

The Town is located in Pinellas County, Florida, in the resort area, and has located in it the large pretentious seasonal hotel known as "Bellevue Hotel" (R. 44). There are approximately seventy-six residences in the Town other than the hotel properties; in addition to these residences and the hotel properties, the Town is composed of approximately one thousand vacant lots, most of which lie in a subdivision known as "Belleair Estates" (R. 72). According to the State Tax Assessor the Town has an assessed valution of over $2,000,000.

The testimony shows that Mr. Haley, one of the Town Attorneys and a consentor to the Plan, became interested in the Town in 1925 (R. 106) as one of the stockholders in Belleair Estates, Inc. (R. 124), and in 1934, he became associated with Mr. Reaves (attorney for the Town and a consentor to the Plan) in litigation against the Town contesting the validity of the bonds. Mr. Haley and Mr. Reaves at that time were representing Palmer and Hobart (other consenting creditors to the Plan), as taxpayers, the Town being defendants in the various actions. No fees were paid these attorneys and consentors to the Plan for the extensive litigation carried on against the Town, although Palmer and Hobart (consentors) paid the out-of-pocket expenses. Then in 1937 Haley became financially interested in the Clearwater Bay Company, a corporation likewise composed of Palmer and Hobart, consenting creditors, which company had purchased the delinquent tax certificates from 1926 to 1936 on about one thousand lots lying in that part of the Town, known as "Belleair Estates." Haley and Reaves, according to the testimony, were instrumental in securing the decision while representing Palmer and Hobart, among others, in the case of *State vs. Town of Belleair*, 125 Fla. 669, 170 So. 434, (1936) contesting the validity of the

bonds. Immediately after this decision Haley and Reaves, still representing Palmer and Hobart, consenting creditors, among others, as taxpayers, brought suit against the Town in the case of *Olds vs. Alvord*, 133 Fla. 221, 183 So. 711, to enjoin the Town from collecting any taxes whatsoever to pay any of its bonded indebtedness. Other litigation was brought by these parties with no promise of fee to be paid either of these attorneys during this extensive litigation although Palmer and Hobart paid the out-of-pocket expenses (R. 129-139). Haley became the attorney for the Town in 1939, and as to his position on both sides of the litigation he said: "As Town Attorney, I was not only * * * [interested] * * * in seeing bonds held invalid on the part of Palmer, Hobart and others, but also on the part of the Town." (R. 136.) In March, 1940, Haley, as City Attorney, went to Chicago to see the then holders of the bonds to see about working out a refunding plan. The holders of the bonds refused to take thirty cents on the dollar in bonds and forgive all interest coupons, but agreed to take thirty cents on the dollar flat in *cash*. After several days discussion, Haley then came back and induced Hobart to put up some money to buy these bonds (R. 118). Hobart then suggested that Palmer and Kirkeby join the syndicate to furnish sufficient moneys to purchase bonds from the bondholders in Detroit at thirty cents on the dollar flat, it being understood that enough bonds must be purchased to give the syndicate 66 2/3rds per cent of the claims. Haley testified that Hobart, Palmer and Kirkeby would not have touched the bonds at any price "except for their interest in the Town, both as property owners and community interests there," (R. 120) and that they had all agreed beforehand "to put over a refunding plan to all of the bondholders at exactly what they paid for them" (R. 120), that is to say, they had agreed to put over the refunding plan at thirty cents on the dollar flat, regardless of the ability of the City to pay.

The interest of Haley, Palmer, Hobart and Kirkeby (consentors to the Plan), as taxpayers, immediate or prospective, appears generally as follows: Palmer, Haley and Hobart owned tax certificates on approximately one thousand lots in Belleair Estates (R. 133), which were purchased at greatly reduced prices. Haley was to receive "a one-third interest in consideration of attorney fees and was to act in clearing up the property and titles in the Clearwater Bay Company, if they go through with the plan" (R. 133). Haley is now a director and stockholder in this company (R. 145). These certificated lots bear approximately nineteen or twenty per cent of the tax load of the Town. The other real estate holdings of Palmer and Hobart represent approximately sixteen per cent of the assessed valuation of the Town (R. 172). Kirkeby, the manager of the Belleview-Biltmore Hotel (the hotel was purchased on April 15, 1940), said the only reason he purchased the bonds was "due to the fact *I was interested in some property* there and the fact that the City's debts were in the condition they were at the time, which was hampering the sale of the property we owned there." (R. 181). The hotel was purchased on April 15, 1940, the bonds were purchased on July 5, 1940, and the plan was filed August 31, 1940. There is no evidence that any other bondholders were ever consulted.

Thus it is that the interests, as taxpayers, immediate or prospective, of these various consenting creditors, appeared as follows:

Clearwater Bay Company, composed of the consenting creditors, Hobart, Palmer and Haley	20%

Hobart and Palmer, personal ownership of lands 16%
Belleair Hotel Properties (Kirkeby) 28%

Moreover, as pointed out previously, these very consentors, during the years from 1932 to 1939 (R. 210) were bringing various suits and actions against the Town by these very same attorneys to contest the validity of the bonds, and to enjoin the Town from levying any taxes to pay the bonds, and no taxes whatsoever during the above-mentioned years were levied for debt service.

The Master found that the consenting creditors, holding approximately 68 per cent of the bonds, were interested in 63 per cent of the property in the Town (R. 55-56). This finding was concurred in by the Court (R. 270), and is thus binding on this Court. *Union Trust Co. vs. Wilson*, 198 U. S. 530, 255 S. Ct. 766, 49 L. Ed. 1154. The Court made this very pertinent observation as to the acquisition of the bonds by the syndicate for the purpose of putting over the refunding plan. The Court said that the syndicate property owning bondholders (R. 271, 306)

> "acquired the controlling amount of the securities of the City for the purpose of putting into effect a Plan of Composition in bankruptcy which would eventually give back to them dollar for dollar all the money advanced by them to the City and for the City and for themselves, with the result that other property would ultimately be relieved of tax liabilities and liens approximating three-quarters of a million dollars, by means of a plan of composition which made no compensating differential to the non-property owning bondholders. *We do not have a situation where a property owner is an incidental owner of a small amount of the bonds of the City, but we have a situation where the property owners purchased a sufficient amount*

of the bonds with the intent and purpose of putting the City into bankruptcy to the vastly greater benefit of themselves than of the non-property owning bondholders."

Thus it is that the consents to the Plan were not obtained as a result of a fair and equitable bargain openly arrived at between the City, as debtor, and the consentors, as creditors. The original bondholders would not consent to taking thirty cents on the dollar in bonds where there was no benefit accruing to them as owners of the property in the Town, consequently they were paid thirty cents on the dollar in cash by the property owning bondholders, who were then willing to accept thirty cents on the dollar in bonds because of the benefits accruing to them as property owners, and who would thus attempt to impose this condition on all other bondholders who received no such benefits as the owners of the property in the Town. This was a special inducement to the property owners only. Tax bills were to be reduced by nearly $1,000,000. and the consenting bondholders purchased the bonds from persons who would not agree to this plan for this very purpose (R. 272), and it is quite pertinent also to point out that where these very consenting creditors paid par for their bonds, they were not willing to vote for the Plan of Composition that contemplated any reduction in their claim, as for instance, that part of the plan which would give them back dollar for dollar of the bonds involved in the item of the peremptory writ of mandamus. All of this reduction in the amount of outstanding taxes on the land of the consenting creditors and the receipt by them of dollar for dollar of what they paid for their securities was the motivating force which led to the purchase of the bonds and the filing of the petition. This Court, in the case of *American United Mutual Life Insurance Company vs. Avon Park,* supra, referred to the question of whether or not the claims of the "fiscal agent" of a City should be voted in favor of a Plan of Composition. The Court pointed out

that *presumptively* such claims would seem to fall within the prohibitive category of being controlled by the City, and therefore must be excluded by virtue of that part of the Act which requires the exclusion of claims owned, held or controlled by the Petitioner, 11 U. S. C. 403 (d), the Court saying:

> "The abuse at which the Act is aimed is not confined to those cases where the holder of the claims is an agent of the city within the strict rules of respondeat superior. Rather, the test is whether or not there is such close identity of interests between the claimant and the city that the claimant's assent to the plan may fairly be said to be more the product of the city's influence and to reflect more the city's desires than an expression of an investor's independent business judgment. Here there was such a close identity of interest between Crummer and the City *vis-a-vis* the refunding as to raise grave doubts as to the propriety of allowing those claims to vote in any event."

Thus, if the fiscal agent cannot vote securities in favor of the plan, and the agent was getting certain inducements, as was set forth in the opinion in the Avon Park case for its vote, which this court broke down as unfair and inequitable, then by the very stronger reason the evidence in this case shows that the holders of 68 per cent of the indebtedness would be relieved of paying 63 per cent of all the taxes, and purchased the bonds for the very purpose of putting the plan into effect at the price at which they paid for their bonds was not really a contract entered into between the Town and its creditors, but was really a scheme on the part of the Town itself to reduce its indebtedness.

We do not have a case where a bondholder may be incidentally a taxpayer, but we have a case, as shown from the record, where three taxpayers of the Town, together with the attorney for those taxpayers, set out on a decided and set

course of procedure to put through a refunding for the sole purpose of benefiting their real estate holdings, and it thus appears that their interests are as taxpayers and not as tax receivers (bondholders). Certainly the consenting creditors, if they were "independent investors" of municipal securities, would not reach an agreement with the Town, as creditors of the Town, by which they, as creditors, would voluntarily relinquish claims against the Town in the sum of hundreds of thousands of dollars once there was some inducement other than merely the getting of a refunding bond for the securities which they purchased.

A very similar case is that of *In Re Kaufman County Improvement District No. 4,* (D. C. Texas) (1940), 34 Fed. Supp. 670, affirmed *Kaufman County Improvement District No. 4 vs. Mitchell,* (C. C. A. 5) 116 F. (2) 959. In that case the landowning bondholders had caused the market on the bonds to be depressed over a number of years; the District had collected no taxes for a number of years, then the land owning bondholders bought up sufficient bonds at depreciated prices and attempted to compose the indebtedness of the District at a greatly reduced figure. The bondholders, who were not taxpayers, objected, claiming they would receive no benefit from the lowering of the taxes in the District. The District Court dismissed the proceeding as not complying with the Bankruptcy Act, and as being discriminatory in favor of the tax paying bondholders, saying:

> "Now, these bond sellers have also become bond buyers when the original bond buyers were dissatisfied or were disgusted with their investments, or it may be that they needed their money and they began to sell them very cheap and very low. * * *
> "I cannot say, as a matter of law, that this is 'fair and equitable'—'fair and equitable and for the best interest

of the creditors, and does not discriminate unfairly in favor of any creditor or class of creditors.' I cannot say that. It does discriminate. That is the purpose of it. That is the reason they went this route. There is little use to talk about that. It is apparent on its face; they thought if they did nothing and paid nothing and let it go to weeds and grass, then they could buy it in and do what they pleased with it, and I am not going to approve it."

"I think I have already found, if I haven't I do now, that I think this condition is the result of a tacit understanding by the landowners within the district. * * * It follows that I cannot approve this plan because of its unfairness and discriminatory nature toward creditors, *and the petition may*, therefore, be dismissed." (Emphasis added.)

On appeal to the United States Circuit Court of Appeals, Fifth Circuit, *In Re Kaufman County Improvement District No. 4 vs. Mitchell*, (C. C. A. 5) (1940) 116 F. (2) 959, the judgment of the District Court was affirmed. The Circuit Court of Appeals agreed with the lower court that "the plan was unfair and discriminatory", and that "in the present case the land owning bondholders should either have been excluded from participation in determining the requisite percentages, or there should have been separate classifications, whereby those creditors owning no lands could have voted and been recorded as such."

That is just what happened in the instant case. The non-land owning bondholders have objected, and the Court has found that their objections are well founded; that the Plan discriminates in favor of other bondholders, the other bondholders should have appealed and not the Town.

1. The Town Cannot Champion the Rights of Third Parties Who Have Not Appealed.

The brief of the Petitioner goes to some length in an attempt to convince this Court that the decision of the lower court held that the Plan was unfair to the consenting creditors, and further points out that the lower court has determined that approximately thirty per cent of par is all that the Town can now reasonably pay. Of course, the objectors have put on no testimony in rebuttal since on the motion to dismiss the lower court and the master found that the Plan did not comply with the Bankruptcy Act. Be that as it may, this observation made by the lower court is interesting (R. 272):

> "Under the evidence in the record, thirty cents on the dollar represents the City's maximum ability to pay. If that be true, and for the present it is an established fact, then the plan of composition should contain some compensating differential in the pe rcentage to be paid the non-property-owning bondholder over that of the property-owning-bondholder."

Not a single consenting creditor who would naturally be affected by the ruling appealed from the judgment of the Court, and they are not now before this Court. The consentors (the property owning bondholders) are the only parties entitled to be heard on the point. As far as the debtor is concerned, it makes no difference to it how the various equities are adjusted among its creditors so long as the maximum thirty per cent of par is retained under the present finding of the court. The Town is not adversely affected by that ruling. It cannot champion the rights of third parties. *McCabe vs. Atchison, T. & S. F. R. Co.*, 235 U. S. 151, 162, 35 S. Ct. 69, 71, 59 L. Ed. 169; *Standard Stock Food Co. vs. Wright*, 225 U. S. 540, 550, 32 S. Ct. 784, 56 L. Ed. 1197; *Cronin vs.*

Adams, 192 U. S. 1081, 24 S. Ct. 219, 48 L. Ed. 365; *Red River Valley National Bank of Fargo vs. Craig*, 181 U. S. 548, 21 S. Ct. 703, 707, 45 L. Ed. 994.

2. The Water and Gas Bonds.

The Town contends that the Court erred in determining that the $90,000.00 of Water and Gas Bonds, described in Section 3 of the Plan of Composition (R. 6) should be refunded in the exact manner as all other bonds. It is indeed hard to understand how the debtor takes this position before the Court. The debtor, in effect, is contending that it should be allowed to pay part of its debt at much higher rates and for much more money to some of its creditors, who incidentally have consented to that method of payment, rather than to refund this indebtedness upon a much lower basis and on the same terms that it would issue bonds to all other creditors. The trust agreement provides that the $90,000. in Water and Gas Bonds would be purchased by the City at $72,000. (or 80 cents on the dollar flat in cash), (under the plan all other bonds would be refunded by an exchange of bonds at 30 cents on the dollar flat). Messrs. Palmer and Hobart, consenting creditors, and others are parties to that trust agreement. The City contends that by virtue of this trust agreement these securities are placed in a different class than other bonds which have not been so fortunate as to make a side agreement with the Town as to how much they should take for their bonds. The trust agreement can be no stronger than the contract in the bonds themselves, and certainly can be no stronger than a final judgment in a court by a writ of mandamus requiring the levy of a tax to pay bonds at 100 cents on the dollar, yet it has already been determined that such a judgment in mandamus creates no right in any creditor which would place it

in any position different from any other creditor. *Vallette vs. Vero Beach*, 104 F. (2) 59; *Touchton vs. Fort Pierce*, 109 F. (2) 370, Cert. Den. 84 L. Ed. 1417. Thus it is that there was no error by the lower court holding that these bonds should be treated in exact manner as all other bonds. The mere fact that the City itself is objecting to the reduction of bonds to the same plane as all of the others is one element indicating how it is completely dominated by the consenting creditors, none of whom have appealed from the orders of the lower district court.

3. No Important Questions of Federal Law Decided.

Petitioner contends that the decision of the lower court has decided an "important question of federal law", and that this Court should therefore review the action of that lower court. It is quite apparent that the whole case turned upon testimony produced, and therefore there is no sufficient ground shown for this Court to review the proceedings.

It is therefore, respectfully submitted that petition for writ of certiorari should be denied.

Respectfully submitted,

ROBERT J. PLEUS,

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